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GILMER *v.* FRANCISCO.

Sept. 22, 1921.

[108 S. E. 669.]

1. **Appeal and Error (§ 781 (4)*)—Case Rendered Moot by Execution Before Supersedeas of Order for Removal of Fence.**—The case on appeal by G. from an order that the sheriff remove a fence erected by G. on his land, as claimed by him, but in the road of petitioner, and in violation of an injunction, as claimed by petitioner, becomes moot, so that appeal will be dismissed, by the fence being removed, pending the appeal, before the execution of the supersedeas bond; the case not being one in which the right of G. to have restoration of the fence is involved.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 430.]

2. **Injunction (§ 215*)—Right to Land Not Determinable in Ex Parte Proceeding for Removal of Fence Erected in Violation of Injunction.**—G. not appearing in an ex parte proceeding by L. to have removed by the sheriff a fence erected by G. in the road of L. and in violation of an injunction, as claimed by L., the court was without jurisdiction to affect, by an order therein, any right and title of G. to the land on which the fence was located.

Appeal from Circuit Court, Scott County.

Ex parte application by W. W. Francisco for an order for removal by the sheriff of a fence erected by T. P. Gilmer in claimed violation of an injunction. From such an order, said Gilmer, claiming the fence was on his own land, appeals. Appeal dismissed.

W. S. Cox and *J. P. Corns*, both of Gate City, for appellant.

S. H. Bond and *W. H. Nickels*, both of Gate City, and *L. P. Summers*, of Abingdon, for appellee.

HENNINGER *v.* MCGINNIS et al.

Sept. 22, 1921.

[108 S. E. 671.]

1. **Waters and Water Courses (§ 107 (3)*)—In Suit to Enjoin Diversion of Spring Water, Complainant Held Not to Have Sustained Burden of Identifying Water.**—On a bill to restrain the defendants from continuing to pipe water from a spring, thus interfering with the natural course of the water therefrom across the complainant's land, held that complainant did not sustain the burden of identifying

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

the water as having come on his land, unless it was in the form of seepages.

1. Waters and Water Courses (§ 107 (2)*)—Party Receiving Water from Mountain Spring through Seepage Is Not Entitled to Enjoin Piping Water from Spring.—Where the waters of a mountain spring appear in a hollow on complainant's land in the form of seepage, or percolating waters only, he is not entitled to relief by injunction against owners diverting the spring water through pipes.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 677.]

3. Waters and Water Courses (§ 107 (3)*)—Evidence Held Not to Show Reduction of Flow on Complainant's Land, Due to Defendants' Piping from Spring.—In a suit to enjoin parties owning a mountain spring from piping water, evidence held not to show that reduction, if any, of the annual flow upon complainant's land is traceable to defendants' piping the spring.

Appeal from Circuit Court, Tazewell County.

Bill by C. T. Heninger against A. M. McGinnis and others. From decree dismissing his bill, plaintiff appeals. Affirmed.

Werth & Werth, of Tazewell, for appellant.

Greever, Gillespie & Divine, of Tazewell, for appellees.

SURRATT et al. v. ESKRIDGE.

Sept. 22, 1921.

[108 S. E. 677.]

1. Bankruptcy (§ 303 (3)*)—Evidence Held to Show Bankrupt's Conveyances to Have Been Made with the Bona Fide Purpose of Preferring Grantees to Extent of Bona Fide Debts.—In action involving validity of conveyances by bankrupt to his son and wife made within four months prior to filing of bankruptcy petition, evidence held to prove that the bankrupt, though he knew at the time he made the conveyances that he was insolvent, conveyed the land with the sole bona fide purpose of preferring the wife and son as creditors to the extent of their bona fide debts without the actual intent to deprive or defeat other creditors of any rights they might have under the Bankruptcy Act and without the contemplation that he would go or be forced into bankruptcy at any time.

2. Bankruptcy (§ 180*)—Bankrupt's Conveyances with Bona Fide Intent to Prefer Creditors to Extent of Bona Fide Debts Held Valid; "Hinder, Delay, or Defraud."—Bankrupt's conveyances, made with knowledge of his insolvency within four months prior to the filing of bankruptcy petition, to his son and his wife in payment of pre-

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